

FILED

DECEMBER 17, 2004

**NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS**

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In the Matter of:

ERIC J. BERMAN, D.O.

CONSENT ORDER

This matter was opened before the New Jersey State Board of Medical Examiners ("Board") upon receipt of a report from the Medical Practitioner Review Panel ("Panel") detailing findings and recommendations made by the Panel upon its investigation of treatment provided by respondent Eric J. Berman, D.O. to patient R.B. The Panel, in turn, had commenced its investigation upon receipt of a report from respondent's medical malpractice insurance carrier detailing that a payment in the amount of \$1,200,000 was made on respondent's behalf to settle a civil medical malpractice claim filed in 1997 and brought by patient R.B. wherein it had been alleged that respondent failed to diagnose a thoracic aortic aneurysm resulting in delayed surgery and total disability.

The Panel's report details that the Panel reviewed information to include emergency room records regarding R.B.'s treatment by respondent in the Millville Hospital on March 16, 1995, available records from the civil malpractice action and testimony offered by respondent Berman when he appeared before the Panel on August 13, 2004, represented by Alfred J. Gausti, Jr., Esq. Upon review of available information, the Panel found that respondent, an emergency room physician, provided care to patient R.B. during a

CERTIFIED TRUE COPY

approximate three hour period on March 16, 1995, after R.B. was brought to the emergency room with primary complaints of abrupt onset, severe thoracic pain. Respondent conducted an initial physical examination and history, ordered a chest x-ray and blood work, and had two EKGs performed during respondent's stay in the emergency room. While in the hospital, R.B. reported experiencing his pain initially ease but then worsen, and then abate a second time after receiving analgesic medications.

R.B. was thereafter discharged from the hospital by Dr. Serman with a primary diagnosis of thoracic sprain/strain, prescribed Valium and Norflex, and told to follow-up with his family physician. Following discharge, R.B.'s pain persisted and worsened, and he then presented the following day at Jefferson Hospital, where a diagnosis of thoracic aortic aneurysm was made. R.B. then sustained a cardiac arrest, and required emergency surgery to repair a type A dissection of the distal aortic arch with a free rupture of the aorta in the left hemothorax, following which R.B. suffered multiple complications and prolonged hospitalization.

The Panel concluded that respondent engaged in gross negligence when he treated R.B. in the emergency room on March 16, 1995. In particular, the Panel found that:

- Respondent failed to order indicated diagnostic tests, to include a CT scan.
- Respondent failed to adequately consider and assess R.B. for the possibility of a thoracic aneurysm.
- Respondent failed to perform bilateral blood pressure or pulses in the arms for comparison.
- Respondent failed to appreciate the significance of findings of a second EKG performed on R.B., which EKG was abnormal.

-- Respondent failed to obtain indicated consultations before discharging R.B. from the emergency room.

-- Respondent negligently discharged R.B. from the emergency room, in a life-threatening condition, without having established an accurate diagnosis and with inadequate discharge instructions.

Respondent testified, when appearing before the Panel, that although there was no notation in the hospital chart, he in fact instructed R.B. to have a CT scan performed, and instructed R.B. not to leave the hospital without having additional testing performed. Respondent claimed that R.B. adamantly refused to submit to the testing, and insisted on leaving the hospital. Respondent further claimed that he informed R.B. that he could be suffering from a life threatening condition including an aneurysm, and noted that an aneurysm was included within his differential diagnosis.

Notwithstanding respondent's testimony, there is no indication anywhere in the medical record, to include not only notations made by respondent but also nursing progress notes, that supports or memorializes respondent's claims. Further, even in the event respondent did in fact urge that a CT scan be performed or that R.B. not leave the hospital, his failure to document said recommendations in the patient chart constitutes a significant omission in record-keeping.

The Board concludes that, in caring for patient R.B., respondent engaged in gross negligence, thereby providing bases for disciplinary action pursuant to N.J.S.A. 45:1-21(c). Respondent does not admit the findings made herein, however, for purposes of settlement, consents to the entry of this Order by the Board. The parties desiring to resolve this matter without formal administrative

proceedings, and the Board finding that good cause exists to resolve this matter on the terms set forth herein, and that the public health, safety and welfare is adequately protected, and for good cause shown:

IT IS on this 8TH day of DECEMBER 2004:

ORDERED AND AGREED:

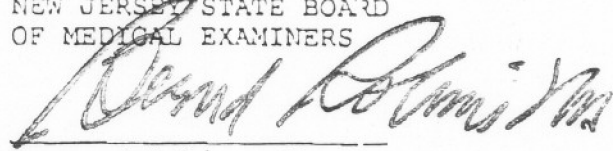
1. Respondent Eric J. Berman, D.O., is hereby formally reprimanded for having engaged in gross negligence when providing emergency room care to patient R.E. on March 16, 1995.

2. Respondent is hereby ordered to pay a civil penalty in the amount of \$5,000, said penalty to be paid in full at the time of entry of this Order.

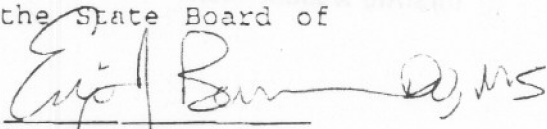
3. Respondent is ordered to take and successfully complete a course, acceptable to the Board, in the preparation of medical records, said course to be completed within six months of the date of entry of this Order.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By:


Bernard Robins, M.D.
Board President

I represent that I have read the terms of this Order and consent to the entry of the Order by the State Board of Medical Examiners


Eric J. Berman, D.O.